TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 12

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

WILLIAM F. SUDDATH, AS RECEIVER OF THE AMERICAN NATIONAL BANK OF ABILENE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED AUGUST 16, 1907.

(20,830.)

(20,830.)

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a United States Circuit Court of Appeals for the Second Circuit.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK,
Plaintiff in Error, (Defendant below,)
vs.
WILLIAM F. SUDDATH, as Receiver of The American National Bank of Abilene, Defendant in Error, (Plaintiff below.)

Transcript of Record.

Error to the Circuit Court of the United States for the Southern District of New York.

Printed under the Direction of the Clerk.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Jan. 5, 1907. William Parkin, Clerk.

1 United States Circuit Court, Southern District of New York.

WILLIAM F. SUDDATH, as Receiver of the American National Bank of Abilene, Plaintiff,
against
THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK,
Defendant.

Petition for Writ of Error.

The first day of December, 1906, came the defendant by its attorney and filed herein and presented to the Court, its petition praying for the allowance of a Writ of Error and an assignment of errors intended to be urged by it and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit and that such further proceedings may be had as may be proper in the premises.

And on consideration whereof, the Court does allow the Writ of Error, upon the defendant giving bond according to law in the sum of $7,500, which shall operate as a supersedeas bond.

E. HENRY LACOMBE,
U. S. Circuit Judge.

2 *Order for Writ of Error.*

United States Circuit Court, Southern District of New York.

WILLIAM F. SUDDATH, as Receiver of the American National Bank of Abilene, Plaintiff,
against
THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Defendant.

And now comes The Hanover National Bank of the City of New York, defendant herein, and says that on or about the first day of December, 1906, this Court entered judgment herein in favor of the plaintiff against this defendant, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed herewith.

Wherefore this defendant prays that a Writ of Error may issue in its behalf out of the United States Circuit Court of Appeals for the Second Circuit, for the correction of the error so complained of and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals for the Second Circuit.

Dated, December 1st, 1906.

PERCY S. DUDLEY,
Attorney for Defendant.

3 (Endorsed:) United States Circuit Court, Southern District of New York.—William F. Suddath, as Receiver of the American National Bank of Abilene, Plaintiff, against The Hanover National Bank of the City of New York, Defendant.—Petition and order allowing writ of Error.—Percy S. Dudley, Attorney for Defendant, 26 Liberty Street, New York City.—Copy received. Dated December 6th, 1906. Edward B. Whitney, Attorney for Plaintiff. U. S. Circuit Court, Southern District New York, Filed Dec. 6, 1906. —John A. Shields, Clerk.

4 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Circuit Court of the United States, for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court, before you, or some of you, between William F. Suddath, as Receiver of the American National Bank of Abilene, plaintiff, and The Hanover National Bank of the City of New York, defendant, a manifest error hath happened, to the great damage of said The Hanover National

Bank of the City of New York, defendant, as is said and appears by its complaint; We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the second day of January, 1907, that the record and proceedings aforesaid being inspected, the said Judges of the United States Circuit Court of Appeals for the Second Circuit, may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice
5 of the United States, this fourth day of December, in the year of Our Lord, one thousand nine hundred and six, and of the Independence of the United States, the one hundred and thirty-first.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. Circuit Court of Appeals, for the Second Circuit.—The Hanover National Bank of the City of New York, Plaintiff in Error, against William F. Suddath, as Receiver of the American National Bank of Abilene, Defendant in Error.—Writ of Error.—Percy S. Dudley, Attorney for Plaintiff in Error, 26 Liberty Street, Borough of Manhattan, New York City.—Copy received this 5th day of December, 1906. Edward B. Whitney, Attorney for Defendant in Error.—U. S. Circuit Court, Southern District New York, Filed Dec. 6, 1906, John A. Shields, Clerk.

6 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, John A. Shields, clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages, numbered from one to forty-one inclusive, contains a true and complete transcript of the record and proceedings had in said Court in the cause of

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK,
Plaintiff in Error,
against
WILLIAM F. SUDDATH, as Receiver of The American National Bank of Abilene, Defendant in Error,

as the same remain of record and on file in said office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, in the Second Circuit, this — day of January in the year of our Lord, one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first.

J. A. SHIELDS, *Clerk.*

7 *Summons.*

United States Circuit Court, Southern District of New York.

RICHARD L. VAN ZANDT, as Receiver of the American National Bank of Abilene,
against
HANOVER NATIONAL BANK.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan in the City of New York, this seventh day of April, in the year one thousand nine hundred and five.

(Sd.) JOHN A. SHIELDS, *Clerk.*

EDWARD B. WHITNEY,
Plaintiff's Attorney.

Office and Post Office Address, 49 Wall Street, Borough of Manhattan, New York City.

8 *Complaint.*

United States Circuit Court, Southern District of New York.

RICHARD L. VAN ZANDT, as Receiver of the American National Bank of Abilene, Plaintiff,
against
HANOVER NATIONAL BANK, Defendant.

The plaintiff above-named complains by direction of the Comptroller of the Currency of the United States, of the defendant above-named as follows, upon information and belief:

I. The defendant is and at all the times hereinafter mentioned has been a National Banking Association organized and incorporated under the Revised Statutes of the United States and carrying on the business of banking in the Southern District of New York.

II. The American National Bank of Abilene, above named, was a National Banking Association organized and incorporated under the Revised Statutes of the United States and carrying on the business of banking at the City of Abilene in the State of Texas at the times hereinafter mentioned and until on or shortly before January 18, 1905, when it closed its doors and then and there suspended and discontinued its business and has not since resumed the same.

9 III. On said January 18, 1905, the Comptroller of the Currency of the United States, having become satisfied of the insolvency of the said bank, did under the authority of the Revised Statutes of the United States appoint the above-named plaintiff Receiver of said American National Bank of Abilene by certificate under his hand and official seal, dated on that day; and said Receiver thereafter duly qualified according to law and entered upon the duties of his trust and has since continued in the discharge of the same.

IV. On or about December 16, 1904, R. H. Logan and W. R. Logan made and delivered to The American National Bank of Abilene, their promissory note dated on said day, whereby for value received, they or either of them promised to pay to the order of said bank at said bank, ninety days after said date, waiving grace, the sum of Three thousand dollars ($3,000) together with ten per cent. interest per annum thereon from maturity until paid.

V. Thereafter and on or about January 4, 1905, the said American National Bank of Abilene endorsed said note and sent the same to the defendant with a request that the defendant discount the same and for no other purpose; and said note and request thereafter and on or about January 9, 1905, reached the defendant. Defendant thereafter refused to discount said note, but did not return the same, and it remained in defendant's hands at the time of the appointment of the plaintiff as Receiver as aforesaid.

VI. Thereafter and on or about February 8, 1905, the plaintiff as Receiver of The American National Bank of Abilene demanded

of the defendant the return of said note and the defendant has failed to return the same.

VII. The plaintiff as such Receiver was the owner of said note at the time of said demand and of the maturity of said note
10 and entitled to the immediate possession thereof. Said note at the time of its maturity, to wit, March 16, 1905, was of the value of Three thousand dollars ($3,000) and from that time forward has been and continues to be until paid, of the additional value of ten per cent. per annum upon said amount from said date.

For a Second and Separate Cause of Action:

VIII. The allegations of paragraphs I, II and III hereof are true and are hereby repeated as a part of this cause of action.

IX. On or about January 9 1905, Hayden Grocery Co. and George Hayden made and delivered to The American National Bank of Abilene, their promissory note dated on January 14 of that year whereby for value received, they or either of them promised to pay to the order of said bank at said bank, sixty days after said date, waiving grace, the sum of Two thousand dollars ($2,000) together with ten per cent. interest per annum thereon from maturity until paid.

X. Thereafter and on or about January 9, 1905, the said American National Bank of Abilene endorsed said note and sent the same to the defendant with a request that the defendant discount the same and for no other purpose; and said note and request thereafter and on or about January 13, 1905, reached the defendant. Defendant thereafter refused to discount said note, but did not return the same, and it remained in Defendants hands at the time of the appointment of the plaintiff as Receiver as aforesaid.

XI. Thereafter and on or about February 8, 1905, the plaintiff as Receiver of The American National Bank of Abilene demanded of the defendant the return of said note and the defendant
11 has failed to return the same.

XII. The plaintiff as such Receiver was the owner of said note at the time of said demand and of the maturity of said note and entitled to the immediate possession thereof. Said note at the time of its maturity, to wit, March 15, 1905, was of the value of Two thousand dollars ($2,000) and from that time forward has been and continues to be until paid, of the additional value of ten per cent. per annum upon said amount from said date.

For a Third and Separate Cause of Action:

XIII. The allegations of paragraphs I, II and III hereof are true and are hereby repeated as a part of this cause of action.

XIV. On or about December 28, 1904, C. B. & W. F. Scarborough made and delivered to The American National Bank of Abilene, their promissory note dated on said day, whereby for value received, they or either of them promised to pay to the order of said bank at said bank, six months after said date, waiving grace, the sum of One thousand five hundred dollars ($1,500) together with ten per cent. interest per annum thereon from maturity until paid.

XV. Thereafter and on or about January 12, 1905, the said American National Bank of Abilene endorsed said note and sent the same

to the defendant with a request that the defendant discount the same and for no other purpose; and said note and request thereafter and on or about January 16, 1905, reached the defendant. Defendant thereafter refused to discount said note, but did not return the same, and it remained in defendant's hands at the time of the appointment of the plaintiff as Receiver as aforesaid.

12 XVI. Thereafter and on or about February 8, 1905, the plaintiff as Receiver of The American National Bank of Abilene demanded of the defendant the return of said note and the defendant has failed to return the same.

XVII. The plaintiff as such Receiver was the owner of said note at the time of said demand and of the maturity of said note and entitled to the immediate possession thereof. Said note is of the value of One thousand five hundred dollars ($1,500), less interest until maturity.

For a fourth and separate cause of action:

XVIII. The allegations of paragraph- I, II and III hereof are true and are hereby repeated as a part of this cause of action.

XIX. On or about January 10, 1905, L. W. Hollis made and delivered to The American National Bank of Abilene, his promissory note dated on said day, whereby for value received he promised to pay to the order of said bank thirty days after said date, waiving grace, the sum of Three thousand five hundred dollars ($3,500) together with ten per cent. interest per annum thereon from maturity until paid.

XX. Thereafter and on or about January 12, 1905, the said American National Bank of Abilene endorsed said note and sent the same to the defendant with a request that the defendant discount the same and for no other purpose; and said note and request thereafter and on or about January 16, 1905, reached the defendant. Defendant thereafter refused to discount said note, but did not return the same, and it remained in defendant's hands at the time of the appointment of the plaintiff as Receiver as aforesaid.

XXI. Thereafter and on or about February 8, 1905, the
13 plaintiff as Receiver of The American National Bank of Abilene demanded of the defendant the return of said note and the defendant has failed to return the same.

XXII. The plaintiff as such Receiver was the owner of said note at the time of said demand and of the maturity of said note and entitled to the immediate possession thereof. Said note at the time of its maturity, to wit, February 9, 1905, was of the value of Three thousand five hundred dollars, ($3,500) and from that time forward has been and continues to be until paid, of the additional value of ten per cent. per annum upon said amount from said date.

Wherefore, the plaintiff demands judgment against the defendant for the possession of the four promissory notes aforesaid, or in case possession thereof cannot be given to plaintiff, for the sum of Ten thousand dollars ($10,000), together with interest upon Three thousand five hundred dollars ($3,500) at the rate of ten per cent. per annum from February 9, 1905, and upon Two thousand dollars ($2,000) at said rate from March 15, 1905, and upon Three thou-

sand dollars ($3,000) at said rate from March 16 1905, and upon One thousand five hundred dollars ($1,500) at said rate from June 28, 1905, if delivered or payment by defendant to plaintiff shall not have been made before that date, together with the costs of this action.

EDWARD B. WHITNEY,
Plaintiff's Attorney.

STATE OF NEW YORK, *County of New York, ss:*

Edward B. Whitney being duly sworn, says, I am the attorney for the plaintiff herein. The foregoing complaint is true to my knowledge except as to the matters therein stated to be alleged
14 on information and belief and as to those matters I believe it to be true. The grounds of my belief as to the matters therein not stated upon knowledge are correspondence and copies of correspondence and papers and other information received as said attorney from the plaintiff. The reason why this verification is not made by said plaintiff is that said plaintiff is not within the County or State of New York where deponent resides and has his office.

EDWARD B. WHITNEY.

Sworn to before me this 7th day of April, 1905.
[SEAL.] EDWARD S. FRITH,
Notary Public, No. 90, Kings Co.

Certificate filed in New York Co.

15 *Answer.*

United States Circuit Court, Southern District of New York.

RICHARD L. VAN ZANDT, as Receiver of the American National Bank of Abilene, Plaintiff,
against
THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Defendant.

The defendant above-named, by its attorney, Percy S. Dudley, answering the complaint of the plaintiff herein.

As to the first cause of action:

I. Denies upon information and belief, the allegations contained in the sub-division of the complaint numbered V and VII, except that it admits that on or about January 10th, 1905, the said American National Bank of Abilene endorsed the note of R. H. Logan and W. R. Logan for $3,000 therein referred to, and sent the same to the defendant for discount and credit, and that said note and letter accompanying the same reached the defendant on or about January 14th, 1905; that the defendant thereupon refused to discount said note, but did not return the same, and that it remained in the defendant's hands at the time of the appointment of the plaintiff as

receiver as therein stated; and except that it alleges that it has no knowledge or information sufficient to form a belief as to the truth of the allegations in said sub-division VII, that said note, at the time of its maturity on March 16th, 1905, was of the value
16 of $3,000, and from that time forward has been and continues to be until paid, of the additional value of ten per cent. per annum upon said amount from said date.

As to the second cause of action:

II. Denies upon information and belief, the allegations contained in the sub-division of the complaint numbered X and XII, except that it admits the allegations contained in said sub-division X, that on or about January 9th, 1905, the American National Bank of Abilene endorsed the note of the Hayden Grocery Company and George Hayden for $2,000 therein referred to, and sent the same to the defendant for discount and credit, and that said note and letter accompanying the same reached the defendant on or about January 14th, 1905; that the defendant thereupon refused to discount said note, but did not return the same, and that it remained in the defendant's hands at the time of the appointment of the plaintiff as receiver as therein stated; and except that it alleges that it has no knowledge or information sufficient to form a belief as to the truth of the allegation in said sub-division XII, that said note at the time of its maturity on March 15th, 1905, was of the value of $2,000 and from that time forward has been and continues to be until paid, of the additional value of ten per cent. per annum upon said amount from said date.

As to third cause of action:

III. Denies upon information and belief, the allegations contained in the sub-division of the complaint numbered XV and XVII, except that it admits the allegations contained in said sub-division XV, that on or about January 12th, 1905, said American National Bank of Abilene endorsed the note of C. B. and W. F. Scarborough for $1,500 therein referred to, and sent the same to
17 the defendant for discount and credit, and that said note and letter accompanying the same reached the defendant on or about January 16th, 1905; that the defendant thereupon refused to discount said note, but did not return the same, and that it remained in the defendant's hands at the time of the appointment of the plaintiff as receiver as therein stated, and except that it admits the allegation contained in said sub-division numbered XVII, that said note was of the value of $1,500 at the maturity thereof.

As to the fourth cause of action:

IV. Denies upon information and belief, the allegations contained in the sub-divisions of the complaint numbered XX and XXII, except that it admits the allegations contained in said sub-division numbered XX, that on or about January 12th, 1905, said American National Bank of Abilene endorsed the note of L. W. Hollis for $3,500 therein referred to, and sent the same to the defendant for discount and credit, and that the said note and letter accompanying the same reached the defendant on or about January 16th, 1905; that the defendant thereupon refused to discount said note, but did not

return the same, and that it remained in the defendant's hands at the time of the appointment of the plaintiff as receiver as therein stated; and except that it alleges that it has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in said sub-division numbered XXII, that said note, at the time of its maturity on February 9th, 1905, was of the value of $3,500, and from that time forward has been and continues to be until paid, of the additional value of ten per cent. per annum upon said amount from said date.

And further answering said complaint, and for a second and separate defense, set-off and counter-claim to the First, Second,
18 Third and Fourth Causes of Action therein set forth.

V. Alleges upon information and belief, that for upwards of a year prior to January, 1905, the American National Bank of Abilene, a banking corporation located at Abilene, Texas, was a correspondent of this defendant, and kept with this defendant a deposit account, depositing therein sundry sums of money which were placed to its credit without distinction and withdrawing the same by checks, bills of exchange, or other obligations in writing, payable at the defendant's place of business, to the order of various persons and corporations, in the ordinary course of business, which were duly paid by this defendant; and that, from time to time, the said American National Bank of Abilene forwarded to the defendant notes or commercial paper made by various persons and owned by said American National Bank, endorsing said paper and offering it to this defendant for sale, with the request that in case this defendant should buy said notes or commercial paper, the proceeds thereof should be deposited to the credit of said American National Bank of Abilene in its said deposit account with this defendant.

VI. Alleges upon information and belief, that on or about November 27th, 1903, the said American National Bank of Abilene entered into an agreement in writing with this defendant, a copy of which is hereto annexed marked "A," wherein and whereby it agreed that all bills of exchange, notes, checks and the proceeds thereof, and all other securities, money and property of every kind owned by said American National Bank, or in which it had any interest, deposited with this defendant, or thereafter to be deposited with this defendant, or which might be in any wise in this defendant bank or under its
control, as collateral security for loans or advances already
19 made or thereafter to be made, to or for account of said American National Bank, by this defendant bank, or otherwise, might be held, collected and retained by this defendant bank, until all liabilities, present or future, of said American National Bank, due or not due, of every kind to this defendant, then or thereafter contracted, should be paid and fully satisfied, as by said agreement more fully appears.

VII. Alleges upon information and belief, that on or about January 14th, 1905, this defendant received from said American National Bank, the note of R. H. Logan, and W. R. Logan for $3,000 referred to in said first cause of action, endorsed by said American National Bank, with a letter accompanying the same offering said

note for sale to this defendant, with the request that if said note were purchased by this defendant, its proceeds should be deposited to the credit of said American National Bank in its deposit account with this defendant; that on or about January 14th, 1905, this defendant also received from said American National Bank, the note of the Hayden Grocery Company for $2,000 referred to in said second cause of action, endorsed by said American National Bank, with a letter accompanying the same offering said note for sale to this defendant, with the request that if said note were purchased by this defendant, its proceeds should be deposited to the credit of said American National Bank in its deposit account with this defendant; that thereupon, on January 14th, 1905, this defendant notified said American National Bank by telegraph that it declined to purchase such notes, and this defendant thereupon held said notes awaiting a further communication from said American National Bank; that on or about January 16th, 1905, this defendant also received from said American National Bank, a note of C. B. & W. F. Scar-
20 borough for $1,500 referred to in said third cause of action, and a note of L. W. Hollis for $3,500 referred to in said fourth cause of action, both endorsed by said American National Bank, with a letter accompanying the same offering said notes for sale to this defendant, with the request that if said notes were purchased by this defendant, their proceeds should be deposited to the credit of said American National Bank in its deposit account with this defendant; that thereupon, on January 16th, 1905, this defendant notified said American National Bank by telegraph that it declined to purchase said notes, and this defendant thereupon held said notes awaiting a further communication from said American National Bank; that in reply to said telegrams, the American National Bank, on January 16th, 1905, wrote this defendant that if it declined to purchase the notes forwarded as aforesaid, the American National Bank would send its own obligation, to which the notes so forwarded would be attached as collateral security if this defendant so preferred; that on January 17th, 1905, this defendant had in its hands, besides the notes above referred to, the following notes purchased by this defendant from said American National Bank and endorsed by it, viz: D. G. Hill for $1,100, due January 18, 1905; George L. Paxton, for $2,000, due February 14, 1905; J. H. Parramore for $2,000, due March 9, 1905; C. W. Merchant & Sons, for $7,000, due April 2nd, 1905, and Continental Oil & Cotton Co., for $5,000, due May 9, 1905; that on said January 17th, 1905, checks or other obligations of said American National Bank drawn on this defendant, were presented to this defendant for payment and were paid, so that at the close of business on that day, the account of said American National Bank with this defendant was overdrawn to the amount of $3,563.86; that is, this defendant, on said date, advanced to and paid out for the account of said Ameri-
21 can National Bank, $3,563.86 in excess of any amount then standing to the credit of said American National Bank in its deposit account with this defendant.

VIII. Alleges upon information and belief, that this defendant

advanced and paid out said moneys to or for the account of said American National Bank in reliance upon said four notes referred to in the complaint herein, pledged to it by and under the terms of said agreement dated November 27, 1903, above referred to.

IX. Alleges upon information and belief, that this defendant carried said advance of $3,563.86 upon its books by making a temporary loan of $3,500 to said American National Bank, and by carrying the balance of $63.86 as an overdraft upon the said deposit account of the American National Bank; that on July 18th, 1905, this defendant received from said American National Bank a remittance of $27.50, and on January 20, 1905, a remittance of $205.41, which this defendant applied in reduction of said overdraft, leaving a balance in said deposit account to the credit of said American National Bank of $169.05; that thereafter, this defendant incurred expenses for express charges, exchange, and insurance in collecting the rediscounted notes held by it, amounting to $13.25, which left a net balance in said deposit account to the credit of the American National Bank of $155.80, which this defendant has applied in reduction of the indebtedness of said American National Bank to it.

X. Alleges upon information and belief, that at maturity, all said notes of D. G. Hill, George L. Paxton, J. H. Parramore, C. W. Merchant & Sons, and Continental Oil & Cotton Company, above referred to, were paid, and the contingent liability of said American National Bank as endorser thereon was thereby extinguished; but that
22 no part of said advance or loan of $3,500 on January 17th, 1905, was paid by said American National Bank, or by the plaintiff herein, as its receiver, and at the time that the plaintiff herein made demand for the return of said notes as set forth in the complaint herein, this defendant held said notes as collateral security for the payment of said indebtedness of $3,500, pursuant to said agreement dated November 27, 1903, and was then, and at all times since has been willing to surrender said notes upon payment of the indebtedness of said American National Bank to it.

XI. Upon information and belief, that on June 9, 1905, the note of the Hayden Grocery Company for $2,000 referred to in said second cause of action was collected by this defendant less a certain offset allowed by agreement with the plaintiff for moneys of said Hayden Grocery Company on deposit with said American National Bank at the time of its failure, the net proceeds thereof being $1,815.83, and that on July 3, 1905, said note of C. B. & W. F. Scarborough for $1,500 was collected by this defendant in full, which amounts, together with the balance of deposit account above referred to, amounting to $155.80, making a total of $3,471.63 were applied in reduction of said advance or loan of $3,500, leaving a balance of $28.37 due to this defendant, no part of which has since been paid, that the remaining notes of R. H. & W. R. Logan, referred to in said first cause of action and of L. W. Hollis, referred to in said fourth cause of action, were not paid at maturity and this defendant thereupon instituted suit against the makers thereof, in courts of proper jurisdiction in the State of Texas, to enforce the collection thereof and that said suits are now pending and undetermined; that the

defendant has offered, and hereby again offers, to deliver said notes and assign all its rights of action thereon to the plaintiff upon
23 payment of the balance of the indebtedness of said American National Bank due to it.

And further answering said complaint, and for a third and separate defense, set-off and counter-claim to the first, second, third and fourth causes of action therein set forth:

XII. Alleges upon information and belief that on or about January 17th, 1905, and prior to the appointment of this plaintiff as receiver of said American National Bank, this defendant loaned and advanced to said American National Bank, the sum of $3,500 on demand, and that at the time of the appointment of the plaintiff as such receiver, said sum of $3,500 and interest was immediately due and payable to this defendant; and that at the time of making said loan, this defendant had in its posses-ion four certain notes more fully described in the first, second, third and fourth causes of action herein respectively upon which it claimed a banker's lien by virtue of which it then retained, and has since retained, said notes or the proceeds thereof until the payment of said indebtedness of the American National Bank to it.

XIII. Upon information and belief, that on June 9, 1905, the note of the Hayden Grocery Company for $2,000 referred to in said second cause of action was collected by this defendant, less a certain offset allowed by agreement with the plaintiff for moneys of said Hayden Grocery Company on deposit with said American National Bank at the time of its failure, the net proceeds thereof being $1,815.83; and that on July 3rd, 1905, said note of C. B. & W. F. Scarborough for $1,500 was collected by this defendant in full, which amount, together with a balance of a deposit account amounting to $155.80, making a total of $3,471.63, were applied in reduction of said loan of $3,500, leaving a balance of $28.37 due this defendant, no part of which has since been paid; that the re-
24 maining notes of R. H. & W. R. Logan referred to — said first cause of action, and of L. W. Hollis referred to in said fourth cause of action were not paid at maturity and this defendant thereupon instituted suit against the makers thereof in courts of proper jurisdiction in the State of Texas, to enforce the collection thereof, and that said suits are now pending and undetermined; that this defendant has no knowledge or information sufficient to form a belief as to the value of said notes; but that the defendant has offered, and hereby again offers to deliver said notes and assign all its rights of action thereon to the plaintiff upon payment of a balance of the indebtedness of said American National Bank due to it.

Wherefore, this defendant prays judgment that the complaint herein be dismissed with costs.

PERCY S. DUDLEY,
Attorney for Defendant, 26 Liberty Street,
Borough of Manhattan, New York City.

CITY AND COUNTY OF NEW YORK:

Elmer E. Whittaker, being duly sworn, says that he is the Cashier of The Hanover National Bank of the City of New York, the defendant in the above entitled action. That the foregoing answer is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

ELMER E. WHITTAKER.

Sworn to before me this 25th day of September, 1905.

JACOB NIEMAN,
Notary Public, N. Y. Co.

25 "A."

ABILENE, TEXAS, *Nov. 27th*, 1903.

For and in consideration of one dollar to us in hand paid by The Hanover National Bank of the City of New York the receipt whereof is hereby acknowledged, and for other considerations received from said Bank, the undersigned agree with said Bank that all Bills of Exchange, Notes, Checks, and the proceeds thereof, and all other securities, money and property of every kind owned by the undersigned, or either or any of them, or in which they, or any or either of them have any interest deposited with said Bank, or which may be

or which may hereafter be deposited with said Bank

[illegible] collected and retained by said Bank, until all liabilities present or future of the undersigned, or any or either of them, due or not due, of every kind to said Bank, now or hereafter contracted, shall be paid and fully satisfied, and that whenever any of such indebtedness or liabilities are due and unpaid, said Bank may, in the discretion of its President or Cashier, or either of them, upon one day's notice to the undersigned, sell said Bills, Notes or Securities, or other property, or any part thereof, at public or private sale; or may, without notice, discount the same or in the discretion of the President or Cashier of said Bank, or either of them, may compound, compromise, settle, assign and convey, manage, and turn the same into cash according to opportunity, and apply proceeds, after deducting all expenses (legal or otherwise) of sale or collection, to the payment of any or all such indebtedness or liabilities, so due or unpaid, or may without such sale, apply enough of such money or property to satisfy
26 such indebtedness or liabilities, and retain the residue of such proceeds or property so sold, and of the property unsold, until all other liabilities and indebtedness of the undersigned to said Bank, due or not due, are paid and fully sat-sfied.

THE AMERICAN NAT'L BANK,
By J. G. LOWDON, *Pt.*

27 *Extract from the Minutes.*

At a Stated Term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the United States Court Rooms in the Borough of Manhattan, in the City of New York, on Tuesday, the 20th day of November, in the year of our Lord one thousand nine hundred and six.

Present: The Honorable Charles M. Hough, Judge.

WILLIAM F. SUDDATH, as Receiver of the American National Bank,
vs.
HANOVER NATIONAL BANK.

Now comes the plaintiff, by Edward B. Whitney, Esq., his attorney, and moves the trial of this cause. Likewise comes the defendant, by Percy S. Dudley, Esq., its attorney. Thereupon a jury is impaneled and the cause proceeds to trial.

After hearing the arguments of counsel for the respective parties, the Court directs the jury to find a verdict in favor of the plaintiff for $3,725.86/100. An extract from the minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

28 *Judgment.*

United States Circuit Court, Southern District of New York.

WILLIAM F. SUDDATH, as Receiver of the American National Bank,
Plaintiff,
against
HANOVER NATIONAL BANK, Defendant.

The above entitled action having come on for trial on a regular call of the calendar of said Court, at a session thereof held by the Honorable Charles M. Hough, District Judge, and a jury, on the 20th day of November, 1906, in the United States Court and Post Office Building, in the City of New York, and said Court having directed a verdict in favor of the plaintiff, and having ordered that judgment should be entered in said action in favor of the plaintiff against the defendant for the sum of three thousand seven hundred and twenty-five 86/100 dollars ($3,725.86/100) together with the costs of said action, and said costs having been adjusted at the sum of seventy-six 43/100 dollars ($76.43/100),

Now, on motion of Edward B. Whitney, attorney for the plaintiff, it is

Ordered, adjudged and decreed, that the plaintiff, William F. Suddath, as Receiver of The American National Bank, have judgment against the said defendant upon the issues in said action, with

Said letter is as follows:

33 "Your letter of the 12th instant, with enclosures, is at hand, and we have just wired you:

"'Letter 12th received. Not satisfactory.'

"We are not discounting the enclosures for you but hold same as collateral to your indebtedness to us, and remain."

Defendant further puts in evidence a telegram dated January 17, 1905, from the defendant to the American National Bank, reading as follows:

"Sent you two telegrams January fourteenth. Telegraph us what you have done."

Defendant further puts in evidence a transcript of the account of the American National Bank with the Hanover National Bank from January 17, 1905, to January 19, 1905. This account shows a balance to the credit of the American National Bank on the morning of January 17th in the amount of $616.15, a charge of six items, the largest of which is $3,825.45, amounting in all to $4,192.01, and on the credit side a loan of $3,500 on January 17th, together with two small items resulting in a debit balance on the morning of January 18th of $63.86. On January 14th, 1905, there were outstanding certain rediscounted notes, which have since been paid, as stated in paragraphs VII. and X. of the answer.

In connection therewith plaintiff's counsel puts in evidence the original voucher for the item of $3,825.45 on said account, being a check drawn on the defendant by the American National Bank on January 11, 1905, to the order of the New York Life Insurance Company, the amount whereof was paid by the defendant on January 17, 1905, through the Clearing House.

Defendant further puts in evidence a letter dated January 17, 1905, from itself to the American National Bank.

Said letter is as follows:

"As your account showed overdrawn to-day over $3,000,

34 we have made you a temporary loan of $3,500 against collateral in our hands."

Defendant's counsel further puts in evidence a letter dated January 16, 1905, from the American National Bank to defendant, defendant's counsel admitting that this letter was not received until after the failure.

Said letter is as follows:

"We have just received your wire. The rediscounts we sent you were mostly renewals and in every instance 'good as gold.'

"Since the drop in cotton, collections are at a standstill, and our clients expect us to stay with them, and we are obliged to ask the same indulgence from our correspondents.

"Should you prefer, we will send our B/P with collaterals attached.

"'We trust you will accord us the leniency asked for."

It is admitted by the plaintiff, subject to all legal exceptions, except the objection that the witness is not personally present, that Mr. Woodward, the vice-president of the defendant, would testify, if present, that when the checks causing the overdraft of January 17, 1905, were presented for payment and called to his attention

he got out the agreement, a copy whereof is annexed to the answer, looked at it, and believed that he had a right to hold these four notes as collateral; that he relied upon the four notes and whatever rights he would have in regard to them by collateral agreement or otherwise, when allowing the overdraft.

It is admitted that the American National Bank closed its doors on January 18, 1905.

The testimony being thereupon closed, the Court directed a verdict in favor of the plaintiff for $3,725.86, and defendant excepted to the direction of such verdict.

35 The jury thereupon rendered a verdict in favor of the plaintiff for three thousand seven hundred and twenty-five and 86/100 dollars as directed.

Upon application of the defendant, this bill of exceptions, having been duly settled according to the provisions of Rule 69 of this Court, is allowed by me and ordered to become a part of the record of this cause at the trial aforesaid.

CHARLES M. HOUGH, *U. S. J.*

Approved.

EDWARD B. WHITNEY,
Attorney and of Counsel for Plaintiff.
PERCY S. DUDLEY,
Attorney and of Counsel for Defendant.

(Endorsed:) United States Circuit Court, Southern District of New York.—William F. Suddath, as Receiver of The Hanover National Bank of the City of New York, Defendant.—Bill of exceptions.—Percy S. Dudley, Attorney for Defendant, 26 Liberty St., Borough of Manhattan, New York City.—U. S. Circuit Court, Southern District New York, Filed Dec. 4, 1906, John A. Shields, Clerk.

36 *Assignment of Errors.*

United States Circuit Court, Southern District of New York.

WILLIAM F. SUDDATH, as Receiver of the American National Bank of Abilene, Plaintiff,
against
THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Defendant.

And afterwards, to wit, at the same term at which the above entitled cause was tried and judgment therein rendered, comes the defendant aforesaid and says that in the record and proceedings in the above entitled cause, there is manifest error in the following ruling of the Court, to wit:

In the direction of a verdict in favor of the plaintiff.

Wherefore, defendant prays that the judgment entered herein be reversed, and a new trial of the above entitled cause granted.

Dated New York, November 30th, 1906.

PERCY S. DUDLEY,
Attorney for Defendant.

(Endorsed:) United States Circuit Court, Southern District of New York.—William F. Suddath, as Receiver of the American National Bank of Abilene, Kansas, Plaintiff, against The Hanover National Bank of the City of New York, Defendant.—Assignment of errors.—Percy S. Dudley, Attorney for Defendant, 26 Liberty Street, Borough of Manhattan, New York City.—U. S. Circuit Court, Southern District New York, Filed Dec. 4, 1906, John A. Shields, Clerk.

37 *Bond.*

United States Circuit Court, Southern District of New York

WILLIAM F. SUDDATH, as Receiver of the American National Bank of Abilene, Plaintiff,
against
THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Defendant.

Know all men by these presents, that we, The Hanover National Bank of the City of New York, as principal, and Henry R. Carse, as surety, are held and firmly bound unto William F. Suddath, as Receiver of the American National Bank of Abilene, plaintiff above named, in the sum of seventy-five hundred dollars ($7,500), to be paid to the said receiver, or his successor, which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors representatives and assigns firmly by these presents.

Signed with our seals and dated the first day of December, 1906.

Whereas, the above-named defendant, The Hanover National Bank of the City of New York, has sued out a Writ of Error to the United States Circuit Court of Appeals, for the Second Circuit, to reverse the judgment in the above entitled cause by the Circuit Court of the United States for the Southern District of New York;

Now Therefore, the condition of this obligation is such
38 that if the above-named, The Hanover National Bank of the City of New York shall prosecute said writ to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE HANOVER NATIONAL BANK
OF THE CITY OF NEW YORK,
[SEAL.] By ELMER E. WHITTAKER, *Cashier.*
[SEAL.] HENRY R. CARSE.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

On this first day of December, in the year one thousand nine hundred and six, before me personally came Elmer E. Whittaker, to me known, who, being by me duly sworn, did depose and say: That he resided in the City of New York; that he is the Cashier of

The Hanover National Bank of the City of New York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

JACOB NIEMAN,
Notary Public, N. Y. Co.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

On this first day of December, nineteen hundred and six, before me personally came Henry R. Carse, to me personally known and known to me to be the same person described in and who
39 executed the foregoing instrument, and duly acknowledged to me that he executed the same.

JACOB NIEMAN,
Notary Public, N. Y. Co.

Form and sufficiency of the foregoing bond and approval thereof consented to.

EDWARD B. WHITNEY,
Attorney for Plaintiff.

(Endorsed:) United States Circuit Court, Southern District of New York.—William F. Suddath, as Receiver of the American National Bank of Abilene, Plaintiff, against The Hanover National Bank of the City of New York, Defendant.—Bond.—Percy S. Dudley, Attorney for Hanover National Bank, 26 Liberty St., New York City.—Approved as to form and also as to sufficiency of sureties, with reservation, however, to the plaintiff of the right at any time to examine the proper surety under oath, as to its assets, liabilities and financial condition generally. E. H. Lecombe, U. S. Circuit Judge.—U. S. Circuit Court, Southern District New York, Filed Dec. 4, 1906, John A. Shields, Clerk.

40 *Citation.*

By the Honorable E. Henry Lacombe, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To William F. Suddath, as Receiver of the American National Bank of Abilene, Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the second day of January, 1907, pursuant to a Writ of Error filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of New York, wherein The Hanover National Bank of the City of New York

is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 4th day of December, in the year of our Lord one thousand nine hundred and six, and of the Independence of these United States the one hundred and thirty-first.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

41 (Endorsed:) United States Circuit Court of Appeals, For the Second Circuit.—The Hanover National Bank, &c., Plaintiff in Error, *vs.* William F. Suddath, as Receiver, &c., Deft. in Error.—Citation.—Copy received December 5, 1906. Edward B. Whitney, Atty. for Deft. in Error.—U. S. Circuit Court, Southern District New York, Filed Dec. 6, 1906, John A. Shields, Clerk.

42 United States Circuit Court of Appeals for the Second Circuit.

No. 264, October Term, 1906.

Argued April 12, 1907; Decided April 30, 1907.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff in Error, (Defendant below),

vs.

WILLIAM F. SUDDATH, as Receiver of The American National Bank of Abilene, Defendant in Error, (Plaintiff Below).

In Error to the Circuit Court of the United States for the Southern District of New York.

Before Judges Wallace, Townsend and Coxe.

On writ of error to review a judgment for $3,802.29, entered in the Circuit Court for the Southern District of New York, upon a verdict directed by the court in favor of defendant in error, who was plaintiff below.

Per Curiam:

This action was before us upon a previous writ of error. (*Van Zandt v. The Hanover Nat. Bank* (149 *Fed. Rep.* 127).

The present record, *mutatis-mutandis*, is identical with that on the former review. The only differences relate to immaterial changes occasioned by the lapse of time. The facts
43 are the same and no reason has been advanced which induces us to change our view of the law.

The judgment is affirmed.

Percy S. Dudley, for the Plaintiff in Error.
Edward B. Whitney, for the Defendant in Error.

44 At a stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 10th day of May one thousand nine hundred and seven.

Present: Hon. William K. Townsend, Hon. Alfred C. Coxe, Circuit Judges.

HANOVER NATIONAL BANK, Plaintiff in Error,
vs.
WILLIAM F. SUDDATH, as Receiver, etc., Defendant in Error.

Error to the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said Circuit Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

W. K. T.
A. C. C.

45 Endorsed: United States Circuit Court of Appeals Second Circuit. Hanover Bank *vs.* Suddath. Order for Mandate. United States Circuit Court of Appeals Second Circuit Filed May 10, 1907. William Parkin, Clerk.

46 United States Circuit Court of Appeals for the Second Circuit.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff in Error (Defendant Below),
against
WILLIAM F. SUDDATH, as Receiver of The American National Bank of Abilene, Defendant in Error (Plaintiff Below).

Petition for Writ of Error.

The twenty-ninth day of July, 1907, came the plaintiff in error by its attorney and filed herein and presented to the Court, its petition praying for the allowance of a Writ of Error and an assignment of errors intended to be urged by it, and praying also that a transcript of the record and proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such further proceedings may be had as may be proper in the premises.

And on consideration whereof, the Court does allow the Writ of Error, upon the defendant giving bond according to law in the sum of $7,500, which shall operate as a supersedeas bond.

ALFRED C. COXE,
U. S. Cir. Judge.

47 United States Circuit Court of Appeals for the Second Circuit.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff in Error (Defendant Below),
against
WILLIAM F. SUDDATH, as Receiver of The American National Bank of Abilene, Defendant in Error (Plaintiff Below).

And now comes, The Hanover National Bank of the City of New York, plaintiff in error herein and says that on or about the tenth day of May, 1906, this Court entered judgment herein, affirming a judgment of the Circuit Court for the Southern District of New York, in favor of the defendant in error against this plaintiff in error, in which judgment and proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed herewith.

Wherefore this plaintiff in error prays that a Writ of Error may issue in its behalf out of the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated, July 29, 1907.

PERCY S. DUDLEY,
Attorney for Plaintiff in Error.

48 Endorsed: United States Circuit Court of Appeals, Second Circuit. The Hanover National Bank of the City of New York, Plaintiff in Error, (Defendant below), against William F. Suddath, as Receiver of The American National Bank of Abilene, Defendant in Error, (Plaintiff below). Copy. Petition and Order Allowing Writ of Error. Percy S. Dudley, Attorney for Plaintiff in Error, 26 Liberty Street, Borough of Manhattan, New York City. United States Circuit Court of Appeals Second Circuit Filed Aug. 3, 1907 William Parkin Clerk.

49 United States Circuit Court of Appeals, Second Circuit.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff in Error (Defendant Below),
against
WILLIAM F. SUDDATH, as Receiver of The American National Bank of Abilene, Defendant in Error (Plaintiff Below).

And afterwards, to wit, at the same term at which the above entitled cause was tried and judgment therein rendered, comes the plaintiff in error aforesaid and says that in the record and proceedings in the above entitled cause, there is manifest error in the following ruling of the Court, to wit:

In affirming a ruling of the United States Circuit Court for the

Southern District of New York, directing a verdict in favor of the defendant in error, plaintiff below.

Wherefore, plaintiff in error prays that the judgment entered herein be reversed and a new trial of the above entitled cause granted.

Dated July 29, 1907.

PERCY S. DUDLEY,
Attorney for Plaintiff in Error.

50 Endorsed: United States Circuit Court of Appeals, Second Circuit. The Hanover National Bank of the City of New York, Plaintiff in Error, (Defendant below), against William F. Suddath, as Receiver of The American National Bank of Abilene, Defendant in Error, (Plaintiff below). Copy. Assignment of Errors. Percy S. Dudley, Attorney for Plaintiff in Error 26 Liberty Street, Borough of Manhattan, New York City. United States Circuit Court of Appeals Second Circuit Filed Aug 3, 1907 William Parkin Clerk.

51 United States Circuit Court of Appeals, Second Circuit.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff in Error (Defendant Below),
against
WILLIAM F. SUDDATH, as Receiver of The American National Bank of Abilene, Defendant in Error (Plaintiff Below).

Know All Men by These Presents that we, The Hanover National Bank of the City of New York as principal, and Henry R. Carse as surety, are held and firmly bound unto William F. Suddath, as Receiver of The American National Bank of Abilene, the defendant in error above named, in the sum of seventy-five hundred dollars ($7500), to be paid to the said receiver or his successor, which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Signed with our seals and dated the twenty-ninth day of July, 1907.

Whereas, the above-named plaintiff in error, The Hanover National Bank of the City of New York, has sued out a Writ of Error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the United States Circuit Court of Appeals for the Second Circuit;

Now, Therefore, the condition of this obligation is such that
52 if the above-named, The Hanover National Bank of the City of New York, shall prosecute said Writ to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK,
By ALEX. D. CAMBELL,
Assistant Cashier.

HENRY R. CARSE. [SEAL.]

CITY AND COUNTY OF NEW YORK, *Southern District of New York*, ss

On this twenty-ninth day of July, in the year One thousand nine hundred and seven, before me personally came Alexander D. Cambell, to me known, who being by me duly sworn, did depose and say; that he resided in the City of New York; that he is an Assistant Cashier of The Hanover National Bank of the City of New York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] JACOB NIEMANN,
Notary Public N. Y. Co.

CITY AND COUNTY OF NEW YORK, *Southern District of New York*, ss

53 On this twenty-ninth day of July, Nineteen hundred and seven, before me personally came Henry R. Carse, to me personally known and known to me to be the same person described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

[SEAL.] JACOB NIEMANN,
Notary Public N. Y. Co.

Form and sufficiency of the foregoing bond and approval thereof consented to.

EDWARD B. WHITNEY,
Attorney for Defendant in Error.

54 Endorsed: United States Circuit Court of Appeals, Second Circuit. The Hanover National Bank of the City of New York, Plaintiff in Error, (Defendant below), against William F. Suddath, as Receiver of The American National Bank of Abilene, Defendant in Error, (Plaintiff below). Copy. Bond. Percy S. Dudley, Attorney for Plaintiff in Error 25 Liberty Street, Borough of Manhattan, New York City. Approved A. C. Coxe, U. S. Cir. Judge. United States Circuit Court of Appeals Second Circuit Filed Aug. 3, 1907 William Parkin Clerk.

55 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 54 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Hanover National Bank of the City of New York against William F. Suddath as Receiver, etc. (Law Case) as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District

of New York, in the Second Circuit, this 3d day of August in the year of our Lord One Thousand Nine Hundred and Seven and of the Independence of the said United States the One Hundred and thirty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WILLIAM PARKIN, *Clerk.*

56 By the Honorable E. Henry Lacombe, one of the Judges of the United States Circuit Court of Appeals for the Second Circuit.

To William F. Suddath, as Receiver of The American National Bank of Abilene, Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at the City of Washington, in the District of Columbia, on the 30th day of October, 1907, pursuant to a Writ of Error filed in the Clerk's Office of the United States Circuit Court of Appeals for the Second Circuit, wherein The Hanover National Bank of the City of New York is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said Writ of Error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the Circuit above named, this 31st day of July, in the year of Our Lord One thousand nine hundred and seven, and of the Independence of these United States, the one hundred and thirty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

ALFRED C. COXE,
Judge of the United States Circuit Court of Appeals, for the Second Circuit.

57 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. The Hanover National Bank of the City of New York, Plaintiff in Error, (Defendant below), against William F. Suddath, as Receiver of The American National Bank of Abilene, Defendant in Error (Plaintiff below). Orig. Citation. Percy S. Dudley, Attorney for Plaintiff in Error, 26 Liberty Street, Borough of Manhattan, New York City. Due & timely service of a copy of the within citation is hereby admitted. Dated August 3, 1907. Edward B. Whitney. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 3, 1907. William Parkin, Clerk.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the United States Circuit Court of Appeals for the Second Circuit, before you, or some of you, be-

tween The Hanover National Bank of the City of New York, plaintiff in error, and William F. Suddath, as Receiver of The American National Bank of Abilene, defendant in error, a manifest error hath happened, to the great damage of said The Hanover National Bank of the City of New York, plaintiff in error, as is said and appears by its complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States at the City of Washington, in the District of Columbia, together with this Writ, so that you have the same at the said place, before the Justices aforesaid, on the 30th day of October, 1907, that the record and proceedings aforesaid being inspected, the said Justices of the Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

59 Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 31st day of July, in the year of Our Lord, One thousand nine hundred and seven, and of the Independence of the United States, the one hundred and thirty-second.

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals in the Second Circuit.

The foregoing Writ is hereby allowed.

[Seal United States Circuit Court of Appeals, Second Circuit.]

ALFRED C. COXE,
U. S. Cir. Judge.

60 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. The Hanover National Bank of the City of New York, Plaintiff in Error, (Defendant below), against William F. Suddath, as Receiver of The American National Bank of Abilene, Defendant in Error, (Plaintiff below). Writ of Error. Percy S. Dudley, Attorney for Plaintiff in Error, 26 Liberty Street, Borough of Manhattan, New York City. Due & timely service of a copy of the within writ of error is hereby admitted. Dated August 3rd, 1907. Edward B. Whitney. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 3, 1907. William Parkin, Clerk.

Endorsed on cover: File No. 20,830. U. S. circuit court of appeals, 2d circuit. Term No. 163. The Hanover National Bank of the City of New York, plaintiff in error, *vs.* William F. Suddath, as Receiver of the American National Bank of Abilene. Filed August 16th, 1907. File No. 20,830.